

§ 143B-431. Department of Commerce – functions.

(a) The functions of the Department of Commerce, except as otherwise expressly provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall include:

- (1) All of the executive functions of the State in relation to economic development and employment security, including by way of enumeration and not of limitation, the expansion and recruitment of environmentally sound industry, labor force development, the administration of unemployment insurance, the promotion of and assistance in the orderly development of North Carolina counties and communities, the promotion and growth of the travel and tourism industries, and energy resource management and energy policy development;
- (2) All functions, powers, duties and obligations heretofore vested in an agency enumerated in Article 15 of Chapter 143A, to wit:
 - a. Repealed by Session Laws 2014-100, s. 15.2A(b), effective October 1, 2014.
 - b. The North Carolina Utilities Commission,
 - c. Repealed by Session Laws 2011-401, s. 1.4, effective November 1, 2011.
 - d. Repealed by Session Laws 2017-57, s. 15.19A(b), effective July 1, 2017.
 - e. State Banking Commission and the Commissioner of Banks,
 - f. Savings Institutions Division,
 - g. Repealed by Session Laws 2001-193, s. 10, effective July 1, 2001.
 - h. Credit Union Commission,
 - i. Repealed by Session Laws 2004-199, s. 27(c), effective August 17, 2004.
 - j. The North Carolina Mutual Burial Association Commission,
 - k. The North Carolina Rural Electrification Authority,
 - l. Repealed by Session Laws 2011-145, s. 14.6(f), effective July 1, 2011.

all of which enumerated agencies are hereby expressly transferred by a Type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of Commerce; and

- (3) All other functions, powers, duties and obligations as are conferred by this Chapter, delegated or assigned by the Governor and conferred by the Constitution and laws of this State. Any agency transferred to the Department of Commerce by a Type II transfer, as defined by G.S. 143A-6, shall have the authority to employ, direct and supervise professional and technical personnel, and such agencies shall not be accountable to the Secretary of Commerce in their exercise of quasi-judicial powers authorized by statute, notwithstanding any other provisions of this Chapter.

(b) The Department of Commerce is authorized to establish and provide for the operation of North Carolina nonprofit corporations for any of the following purposes:

- (1) To aid the development of small businesses.
- (2) To achieve the purposes of the United States Small Business Administration's 504 Certified Development Company Program.
- (3) To acquire options and hold options for the purchase of land under G.S. 143B-437.02.

(b1) The Department of Commerce is authorized to contract for the preparation of proposals and reports in response to requests for proposals for location or expansion of major industrial projects.

(c) The Department of Commerce shall have the following powers and duties with respect to local planning assistance:

- (1) To provide planning assistance to municipalities and counties and joint and regional planning boards established by two or more governmental units in the solution of their local planning problems. Planning assistance as used in this section shall consist of making population, economic, land use, traffic, and parking studies and developing plans based thereon to guide public and private development and other planning work of a similar nature. Planning assistance shall also include the preparation of proposed subdivision regulations, zoning ordinances, capital budgets, and similar measures that may be recommended for the implementation of such plans. The term planning assistance shall not be construed to include the providing of plans for specific public works.
- (2) To receive and expend federal and other funds for planning assistance to municipalities and counties and to joint and regional planning boards, and to enter into contracts with the federal government, municipalities, counties, or joint and regional planning boards with reference thereto.
- (3) To perform planning assistance, either through the staff of the Department or through acceptable contractual arrangements with other qualified State agencies or institutions, local planning agencies, or with private professional organizations or individuals.
- (4) To assume full responsibility for the proper execution of a planning program for which a grant of State or federal funds has been made and for carrying out the terms of a federal grant contract.
- (5) To cooperate with municipal, county, joint and regional planning boards, and federal agencies for the purpose of aiding and encouraging an orderly, coordinated development of the State.
- (6) To establish and conduct, either with its own staff or through contractual arrangements with institutions of higher education, State agencies, or private agencies, training programs for those employed or to be employed in community development activities.

(d) The Department of Commerce, with the approval of the Governor, may apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual and may comply with the terms, conditions, and limitations of such grants in order to accomplish the Department's purposes. Grant funds shall be expended pursuant to the Executive Budget Act. In addition, the Department shall have the following powers and duties with respect to its duties in administering federal programs:

- (1) To negotiate, collect, and pay reasonable fees and charges regarding the making or servicing of grants, loans, or other evidences of indebtedness.
- (2) To establish and revise by regulation, in accordance with Chapter 150B of the General Statutes, schedules of reasonable rates, fees, or charges for services rendered, including but not limited to, reasonable fees or charges for servicing applications. Schedules of rates, fees, or charges may vary according to classes of service, and different schedules may be adopted for public entities, nonprofit entities, private for-profit entities, and individuals.
- (3) To pledge current and future federal fund appropriations to the State from the Community Development Block Grant (CDBG) program for use as loan

guarantees in accordance with the provisions of the Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700, et seq., authorized by the Housing and Community Development Act of 1974 and amendments thereto. The Department may enter into loan guarantee agreements in support of projects sponsored by individual local governments or in support of pools of two or more projects supported by local governments with authorized State and federal agencies and other necessary parties in order to carry out its duties under this subdivision. In making loan guarantees and grants under this subdivision the Department shall take into consideration project applications, geographic diversity and regional balance in the entire community development block grant program. In making loan guarantees authorized under this subdivision, the Department shall ensure that apportionment of the risks involved in pledging future federal funds in accordance with State policies and priorities for financial support of categories of assistance is made primarily against the category from which the loan guarantee originally derived. A pledge of future CDBG funds under this subdivision is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subdivision does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes, nor may pledges exceed twice the amount of annual CDBG funds.

Prior to issuing a Section 108 Loan Guarantee agreement, the Department of Commerce must make the following findings:

- a. The minimum size of the Section 108 Loan Guarantee is (i) seven hundred fifty thousand dollars (\$750,000) for a project supported by an individual local government and (ii) two hundred fifty thousand dollars (\$250,000) for a project supported as part of a loan pool; and the maximum size is five million dollars (\$5,000,000) per project.
- b. The Section 108 Loan Guarantee cannot constitute more than fifty percent (50%) of total project costs.
- c. The project has ten percent (10%) equity from the corporation, partnership, or sponsoring party. "Equity" means cash, real estate, or other hard assets contributed to the project and loans that are subordinated in payment and collateral during the term of the Section 108 Loan Guarantee.
- d. The project has the personal guarantee of any person owning ten percent (10%) or more of the corporation, partnership, or sponsoring entity, except for projects involving Low-Income Housing Tax Credits under section 42 of the Internal Revenue Code or Historic Tax Credits under section 47 of the Internal Revenue Code. Collateral on the loan must be sufficient to cover outstanding debt obligations.
- e. The project has sufficient cash flow from operations for debt service to repay the Section 108 loan.
- f. The project meets all underwriting and eligibility requirements of the North Carolina Section 108 Guarantee Program Guidelines and of the Department of Housing and Urban Development regulations, except that projects involving hotels, motels, private recreational

facilities, private entertainment facilities, and convention centers are ineligible for Section 108 loan guarantees.

The Department shall create a loan loss reserve fund as additional security for loans guaranteed under this section and may deposit federal program income or other funds governed by this section into the loan loss reserve fund. The Department shall maintain a balance in the reserve fund of no less than ten percent (10%) of the outstanding indebtedness secured by Section 108 loan guarantees.

(e) The Department of Commerce may establish a clearinghouse for State business license information and shall perform the following duties:

- (1) Establish a license information service detailing requirements for establishing and engaging in business in the State.
- (2) Provide the most recent forms and information sheets for all State business licenses.
- (3) Prepare, publish, and distribute a complete directory of all State licenses required to do business in North Carolina.
- (4) Upon request, the Department shall assist a person as provided below:
 - a. Identify the type and source of licenses that may be required and the potential difficulties in obtaining the licenses based on an informal review of a potential applicant's business at an early stage in its planning. Information provided by the Department is for guidance purposes only and may not be asserted by an applicant as a waiver or release from any license requirement. However, an applicant who uses the services of the Department as provided in this subdivision, and who receives a written statement identifying required State business licenses relating to a specific business activity, shall not be assessed a penalty for failure to obtain any State business license which was not identified, provided that the applicant submits an application for each such license within 60 days after written notification by the Department or the agency responsible for issuing the license.
 - b. Arrange an informal conference between the person and the appropriate agency to clarify licensing requirements or standards, if necessary.
 - c. Assist in preparing the appropriate application and supplemental forms.
 - d. Monitor the license review process to determine the status of a particular license. If there is a delay in the review process, the Department may demand to know the reasons for the delay, the action required to end the delay, and shall provide this information to the applicant. The Department may assist the applicant in resolving a dispute with an agency during the application process. If a request for a license is refused, the Department may explain the recourse available to the person under the Administrative Procedure Act.
- (5) Collaborate with the business license coordinator designated in State agencies in providing information on the licenses and regulatory requirements of the agency, and in coordinating conferences with applicants to clarify license and regulatory requirements.

Each agency shall designate a business license coordinator. The coordinator shall have the following responsibilities:

- a. Provide to the Department the most recent application and supplemental forms required for each license issued by the agency, the most recent information available on existing and proposed agency rules, the most recent information on changes or proposed changes in license requirements or agency rules and how those changes will affect the business community, and agency publications that would be of aid or interest to the business community.
- b. Work with the Department in scheduling conferences for applicants as provided under this subsection.
- c. Determine, upon request of an applicant or the Department, the status of a license application or renewal, the reason for any delay in the license review process, and the action needed to end the delay; and to notify the applicant or Department, as appropriate, of those findings.
- d. Work with the Department or applicant, upon request, to resolve any dispute that may arise between the agency and the applicant during the review process.
- e. Review agency regulatory and license requirements and to provide a written report to the Department that identifies the regulatory and licensing requirements that affect the business community; indicates which, if any, requirements should be eliminated, modified, or consolidated with other requirements; and explains the need for continuing those requirements not recommended for elimination.
- f. Report, on an annual basis, to the Department on the number of licenses issued during the previous fiscal year on a form prescribed by the Department.

(f) Financial statements submitted to the Department by a private company or an individual seeking assistance from the Department are not public records as defined in G.S. 132-1. (1977, c. 198, s. 1; 1987, c. 214; 1989, c. 76, s. 25; c. 751, s. 2; 1991, c. 689, s. 153; 1991 (Reg. Sess., 1992), c. 959, s. 49; 1995, c. 310, s. 1; 1995 (Reg. Sess., 1996), c. 575, s. 1; 2001-193, s. 10; 2004-124, ss. 6.26(c), 6.26(d), 13.9A(c); 2004-199, s. 27(c); 2011-145, s. 14.6(f); 2011-297, s. 3; 2011-401, s. 1.4; 2012-187, s. 10.3; 2014-100, s. 15.2A(b); 2017-57, s. 15.19A(b).)